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Lai Hee Sang v Pun Hai Chin

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02(NCVC)(W)-1172/07 OF 2015
ABANG ISKANDAR, ZAMANI A RAHIM AND MARY LIM JJCA
1 SEPTEMBER 2016

C

Land Law — Sale of land — Land settlement area — Respondent entered into sale and purchase agreement of land in group settlement area with appellant — Issue document of title of land endorsed with restriction in interest — Prior approval of state authority required to effect transfer — Application for approval rejected — Whether agreement valid and binding on parties — Whether appellant's claim for specific performance or declaration of trust or damages — Whether appellant's claim barred by statute and doctrine of laches — Whether appellant proved his loss and damages — Limitation Act 1953 — National Land Code

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The respondent's father ('the deceased') was given a right to occupy a piece of land in a group settlement area known as RH 17 Lot 3673 which the deceased had sold to the appellant via the agreement of sale and irrevocable power of attorney dated 26 December 1966. After the respondent's father passed away, the respondent as the administrator of the estate of the deceased had by way of the agreement of sale and irrevocable power of attorney dated 25 June 1974 ('the 1974 agreement') sold RH 17 Lot 3673 to the appellant for the sum of RM4,000 which was paid in full by the appellant. The issue document of title for RH 17 Lot 3673 was finally issued on 15 September 1995 held under GM 1093 Lot 3673 ('the said land') and a private caveat was entered on the said land on 18 December 1995. However, the said title contains restriction in interest that prior approval from the state authority must be obtained before the said land could be transferred. The respondent's application for the requisite approval was rejected on 1 August 1996. Subsequently, the appellant brought an action against the respondent for declaration of trust or specific performance of the 1974 agreement or an injunction or damages, premised on the tort of deception and/or misrepresentation. In response, the respondent counterclaimed against the appellant for a declaration that the 1974 agreement was null and void and was no longer binding; and also for an order of injunction. The trial court dismissed the appellant's claim and allowed the respondent's counterclaim, hence this appeal.

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Held, affirming the decision of the trial judge; dismissing the appellant's appeal; and allowing the respondent's appeal on the counterclaim with costs of RM30,000 subject to allocatur:

(1) The restriction in interest endorsed on the said land was imposed under s 120 of the National Land Code. Since the respondent's application for the requisite approval had been rejected, the 1974 agreement became unenforceable and could not bind the parties as well as the state authority to transfer the said land to the appellant. The general rule is that statute overrides contractual provisions (see paras 19 & 21).

(2) The deceased's right in expectation of title was only vested in the respondent on the 8 August 1993. The respondent therefore did not and could not have any interest in the said land/holding under the 1974 agreement which was entered into in the year 1974. The respondent could not held on trust of the said land/holding for the appellant, as he did not have any interest in the said land in 1974 that could be transferred to him. Further, the respondent could not approbate and reprobate as an action for specific performance was clearly inconsistent with a claim for declaration of trust (see paras 27–28 & 30).

(3) The appellant's cause of action accrued in 1996 immediately after he had entered a private caveat against the said land on the 18 December 1995. As his claim was premised on the tort of deception and misrepresentation, he must bring his claim within six years ie before 2002. Even if his claim was for recovery of land, he must have filed his claim within 12 years from 1996 ie before 2008. However, since the appellant had only commenced his present claim on 14 May 2014 which was 18 years later, his claim was therefore statute-barred by the provisions of the Limitation Act 1953. The appellant's claim was also defeated by the doctrine of laches and acquiescence (see paras 39–40).

(4) As special damages are actual pecuniary loss allegedly suffered by the appellant, it is trite that it must be strictly proved. In the present case, the appellant had failed to lead any evidence to strictly prove special damages. Further, during the trial, the appellant had admitted that the yields he had collected were more than his alleged expenses. He had therefore suffered no loss whatsoever (see paras 44–46).

[Bahasa Malaysia summary

Bapa responden ('si mati') diberikan hak untuk menghuni sebidang tanah dalam kumpulan kawasan penempatan yang dikenali sebagai RH 17 Lot 3673 yang mana si mati telah jual kepada perayu melalui perjanjian jualan dan surat kuasa wakil tak boleh batal bertarikh 26 Disember 1966. Selepas bapa responden meninggal dunia, responden sebagai pentadbir estet si mati telah melalui perjanjian jualan dan surat kuasa wakil tak boleh batal bertarikh 25 Jun 1974 ('perjanjian 1974 tersebut') menjual RH 17 Lot 3673 kepada perayu bagi jumlah RM4,000 yang mana dibayar penuh oleh perayu. Isu dokumen hak milik bagi RH 17 Lot 3673 akhirnya dikeluarkan pada 15 September 1995 dipegang di bawah GM 1093 Lot 3673 ('tanah tersebut') dan kaveat

persendirian dimasukkan atas tanah tersebut pada 18 Disember 1995. Walau bagaimanapun, hak milik tersebut mengandungi sekatan dalam kepentingan bahawa kelulusan terdahulu daripada pihak berkuasa negeri mesti diperolehi sebelum tanah tersebut boleh dipindahkan. Permohonan responden bagi kelulusan yang diperlukan ditolak pada 1 Ogos 1996. Perayu, kemudiannya membawa tindakan terhadap responden bagi perisytiharan amanah atau pelaksanaan spesifik perjanjian 1974 atau injunksi atau ganti rugi, berdasarkan atas tort penipuan dan/atau misrepresentasi. Dalam menjawab, responden menuntut balas terhadap perayu bagi perisytiharan bahawa perjanjian 1974 adalah tak sah dan terbatal dan bukan lagi mengikat; dan juga untuk perintah injunksi. Mahkamah perbicaraan menolak tuntutan perayu dan membenarkan tuntutan balas responden, maka rayuan ini.

Diputuskan, mengesahkan keputusan hakim perbicaraan; menolak rayuan perayu; dan membenarkan rayuan responden atas tuntutan balas dengan kos sebanyak RM30,000 tertakluk kepada alokatur:

(1) Sekatan kepentingan yang diindorskan atas tanah tersebut dikenakan di bawah s 120 Kanun Tanah Negara. Memandangkan permohonan responden bagi kelulusan yang diperlukan telah ditolak, perjanjian 1974 menjadi tidak boleh dikuatkuasa dan tidak boleh mengikat pihak-pihak dan juga pihak berkuasa negeri untuk memindahkan tanah tersebut kepada perayu. Peraturan am adalah bahawa statut menolak peruntukan kontraktual (lihat perenggan 19 & 21).

(2) Hak si mati dalam menjangka hak milik hanya terletak hak dalam responden pada 8 Ogos 1993. Responden oleh itu tidak dapat dan tidak boleh mempunyai apa-apa kepentingan di dalam tanah tersebut/pegangan di bawah perjanjian 1974 yang mana dimasuki dalam tahun 1974. Responden tidak dapat memegang atas amanah tanah tersebut/memegang untuk perayu, kerana dia tidak mempunyai apa-apa kepentingan dalam tanah tersebut pada tahun 1974 yang boleh dipindahkan kepadanya. Selanjutnya, responden tidak dapat menerima dan menolak kerana tindakan untuk pelaksanaan spesifik jelas tidak konsisten dengan tuntutan untuk perisytiharan amanah (lihat perenggan 27–28 & 30).

(3) Kausa tindakan perayu terakru pada tahun 1996 sebaik saja dia memasuki kaveat persendiriaan terhadap tanah tersebut pada 18 Disember 1995. Memandangkan tuntutannya didasarkan atas tort penipuan dan misrepresentasi, dia mesti membawa tuntutannya dalam masa enam tahun iaitu sebelum 2002. Walaupun tuntutannya adalah untuk pemulihan tanah, dia mesti memfailkan tuntutannya dalam masa 12 tahun dari tahun 1996 iaitu sebelum 2008. Walau bagaimanapun, memandangkan perayu hanya memulakan tuntutan ini pada 14 Mei 2014 yang mana adalah 18 tahun kemudiannya, tuntutannya oleh itu

dihalang statut oleh peruntukan Akta Had Masa 1953. Tuntutan perayu adalah dipatahkan oleh doktrin kecuaian dan persetujuan (lihat perenggan 39–40).

(4) Memandangkan ganti rugi khas adalah kerugian kewangan sebenar yang didakwa ditanggung oleh perayu, ia adalah nyata bahawa ia mesti dibuktikan dengan ketat. Dalam kes ini, perayu telah gagal untuk membawa apa-apa keterangan untuk membuktikan secara ketat ganti rugi khas. Selanjutnya, semasa perbicaraan, perayu telah mengaku bahawa hasil yang dikutipnya adalah lebih daripada perbelanjaan yang didakwanya. Perayu oleh itu tidak menanggung apa-apa kerugian (lihat perenggan 44–46).]

Notes

For a case on land settlement area, see 8(3) *Mallal's Digest* (5th Ed, 2015) para 5051.

Cases referred to

Bonham Carter v Hyde Park Hotel [1948] WN 89, KBD (refd)
Kerajaan Negeri Sarawak & Ors v Basnol bin Abol (deceased) & Ors and other appeals [2003] 1 MLJ 376, CA (refd)
M Ratnavale v S Lourdenadin [1988] 2 MLJ 371, SC (refd)
Panchanath a/l Ratnavale (suing as the beneficiary to the estate of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased under will dated 10 February 1971) v Sandra Segara Mahalingam (sued as the executor and trustee of the last will of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased dated 10 February 1971) & Ors [2012] 5 MLJ 109, HC (refd)
Raman a/l Sinnathamby lwn Munusamy a/l Sinnathamby (sebagai pentadbir harta pusaka Singaramvathy a/p Singaram, si mati) [2007] 5 MLJ 377, HC (refd)
Sinar Wang Sdn Bhd v Ng Kee Seng [2005] 2 MLJ 42; [2004] 3 CLJ 679, CA (refd)
Teo Ah Bin @ Teo Eng Bin v Tan Kheng Guan [2002] 3 MLJ 121, HC (refd)

Legislation referred to

Land (Group Settlement Areas) Act 1960 ss 19, 22, 24, 47, Form C, First Schedule
Limitation Act 1953 ss 6, 9, 32
National Land Code ss 76, 109(2)(a), 120, 124

Appeal from: Civil Suit No 22NCVC-21–05 of 2014 (High Court, Muar)

Chok Zhin Theng (Cheah Teh & Su) for the appellant.
Pang Kok Liong (CC Aiyathurai & Co) for the respondent.

Zamani A Rahim JCA:

INTRODUCTION

[1] This is an appeal by the appellant ('the plaintiff') against the decision of the High Court at Muar given on the 24 June 2015, dismissing the appellant's claim and allowing the respondent's ('the defendant's') counterclaim with costs.

[2] The appellant sought the following reliefs:

(a) a declaration that the agreement of sale and irrevocable power of attorney dated 25 June 1974 remains valid and binding on the respondent under prayer 26(xvi) of the statement of claim;

(b) either:

(i) an order of specific performance of the agreement and irrevocable power of attorney dated 25 June 1974 directing the respondent to deliver to the appellant the following original documents:

(1) the issue of title for the said land; and

(2) the quit rent receipt for the said land for the current year, within fourteen (14) days from the date hereof failing which the appellant may apply to the Land Office for the issuance of a replacement title, for the appellant to submit fresh application(s) for approval of the 'Penguasa Negeri' to transfer the said land from the respondent to any proposed transferee nominated by the appellant. Or alternatively,

(ii) an order that the title to the said land be cancelled under prayer 26(xvi) of the statement of claim;

(iii) an order for specific performance of the 1974 agreement and irrevocable power of attorney directing the respondent to submit the 'assignment of rights in expectation of title' for the collector's approval as per prayer 26(ii) of the statement of claim within fourteen days from the date of this order, failing which the senior assistant registrar of the High Court shall be empowered to execute all necessary documents on behalf of the respondent for that purpose;

(c) a declaration that the appellant is entitled to possession of the said land under prayer 26(xvi) of the statement of claim;

(d) an injunction to restrain the respondent from entering the said land under prayer 26(xvi) of the statement of caim;

(e) an order for damages for loss of income at RM3,000 per month from 6 May 2005 until possession of the said land is delivered to the appellant to be paid by the respondent to the appellant under prayer 26(vii) and (xiv) of the statement of claim; and

(f) costs here and below to be paid by the respondent to the appellant as per prayer 26(xv) of the statement of claim.

[3] Learned counsel for the appellant impressed upon us to mould the relief that is to be granted on the particular facts of this case: see the judgment of Gopal Sri Ram JCA (as he then was) in the Court of Appeal case of *Sinar Wang Sdn Bhd v Ng Kee Seng* [2005] 2 MLJ 42; [2004] 3 CLJ 679.

[4] The respondent counterclaimed against the appellant for:

(a) a declaration that the 1974 agreement is null and void and is no longer binding;

(b) an injunction prohibiting the appellant or his nominee(s) from entering private caveat on the respondent's said land held under GM 1093 Lot No 3673, Mukim Jementah, Segamat;

(c) an injunction to restrain the appellant whether by himself or by his workers or servants or agents or otherwise howsoever from entering on the respondent's said land held under GM 1093 Lot No 3673, Mukim Jementah, Segamat or any part thereof;

(d) an order directing the appellant to demolish the tomb erected on the said land within 60 days from the date of the judgment; and

(e) costs of this action.

BACKGROUND FACTS

[5] Briefly, the facts are these. The respondent's father, Pua Deck Kee, ('the deceased') was given a right to occupy a piece of land/holding in a group settlement area held under RH 17 Lot 3673 GSA Batu 9, Mukim Jementah, Segamat in expectation of title by Pesuruhjaya Tanah Dan Galian on the 19 November 1961. By the agreement of sale and irrevocable power of attorney dated 26 December 1966, Pua Deck Kee allegedly sold the land held under RH 17 Lot 3673 to the appellant. Pua Deck Kee died on 7 July 1967. By the agreement of sale and irrevocable power of attorney dated 25 June 1974 ('the 1974 agreement'), the respondent, as the administrator for the estate of Pua Deck Kee, allegedly sold the land held under RH 17 Lot 3673 to the appellant for the sum of RM4,000. The purchase price was paid in full.

[6] Pua Deck Kee's right to occupy the said land in expectation of title vested in the respondent on the 8 August 1993. The issue document of title held under RH 17 Lot 3673 was finally issued on the 15 September 1995 held under GM 1093 Lot 3673, Mukim Jementah, Segamat ('the said land'). As the said land is situated in a group settlement area, the said title contains restrictions in interest, that is, 'tanah yang dikurniakan tidak boleh dijual, dicagar, digadai, dipajak atau dipindahmilik dengan apa cara sekalipun termasuk dengan cara menggunakan segala surat perjanjian yang bertujuan untuk melepaskan/menjual tanah ini, tanpa kebenaran terdahulu Penguasa Negeri'. The respondent's application for the requisite approval was rejected on 1 August 1996.

THE APPELLANT'S CASE

[7] The appellant pleaded that the 1974 agreement is valid and binding upon both parties and he is therefore entitled to the said land. The appellant claims for declaration of trust or specific performance of the 1974 agreement or an injunction or damages, premised on the tort of deception and/misrepresentation.

THE RESPONDENT'S CASE

[8] The respondent contended that the 1974 agreement was a conditional agreement. The sale was subject to the provisions of the Land (Group Settlement Areas) Act 1960 and the National Land Code ('the NLC 1965'). As the original issue document of title held under RH 17 Lot 3673 issued on the 15 September 1995 contained restrictions in interest and the application for the requisite approval was rejected, the 1974 agreement was rendered unenforceable and became null and void. The respondent further contended that the appellant's claim is barred by statute and the doctrine of laches and acquiescence. The appellant has also allegedly failed to prove its case against the respondent.

THE FINDINGS BY THE HIGH COURT

[9] At the end of the trial, the High Court had dismissed the claim by the appellant and allowed the respondent's counterclaim. The learned trial judge's finding is encapsulated in the concluding paragraph of her judgment at p 16 of *rekod rayuan tambahan kedua*. It is as follows:

> [21] Kesimpulan yang boleh dibuat oleh saya untuk tuntutan plaintif ini ialah:
>
> Plaintif telah gagal membuktikan tuntutannya di bawah Seksyen 101 dan 103 Akta Keterangan 1950. Segala pernyataannya telah tidak disokong oleh apa-apa keterangan dokumentasi mahupun keterangan lisan. Apa yang nyata di sini keterangan lebih memihak kepada defendan dimana perjanjian telah tidak dapat

dikuatkuasakan memandangkan terdapatnya sekatan kepentingan yang tidak dapat di atasi oleh pihak-pihak.

Keputusan Pihak Berkuasa Negeri telah mengatasi niat pihak-pihak dan ini telah menyebabkan perjanjian tersebut terbatal dan tidak dapat dikuatkuasakan.

Tindakan plaintif ini juga telah dihalang oleh had masa dan ianya juga terhalang oleh doktrin kelewatan yang melampau (laches).

Jikapun plaintif berjaya di dalam tuntutannya yang memohon deklarasi dan untuk pelaksanaan spesifik plaintif juga telah gagal untuk membuktikan gantirugi khas yang dituntutnya. Gantirugi khas perlu dibuktikan secara spesifik dan kukuh namun kesemuanya tidak dibuktikan oleh plaintif. Malah, dari keterangannya sendiri plaintif telah mendapat dan menikmati keuntungan yang berganda hasil dari tanaman getah yang ditanamnya sepanjang tempoh pendudukannya di hartanah tersebut iaitu selama 40 tahun. Oleh itu, saya telah menolak tuntutan plaintif ini.

Berdasarkan fakta dan alasan di atas, saya telah menolak tuntutan plaintif dan membenarkan tuntutan balas defendan beserta kos.

THE APPEAL

[10] In proving the claim against the respondent, the appellant's learned counsel submitted, inter alia:

(a) whether the respondent did apply from the Pentadbir Tanah Daerah Segamat to transfer the land/holding to the appellant;

(b) whether the appellant's claim was for specific performance or a declaration of trust or damages; and

(c) whether the appellant suffered loss or damages pursuant to the tort of deception and misrepresentation committed by the respondent.

[11] In his counterclaim, learned counsel for the respondent argued, inter alia:

(a) whether the respondent held the land/holding RH 17 Lot 3673 on trust for the appellant;

(b) whether upon rejection of the application for consent to transfer, the 1974 agreement was rendered null and void and not binding; and

(c) whether the appellant's claim was statute-barred by the Limitation Act 1953 or the doctrine of laches and acquiescence.

OUR CONSIDERATION AND DECISION

[12] Having considered the *rekod rayuan (Bahagian A & B) Jld 1, (Bahagian C) Jld 2(1), (Bahagian C) Jld 2(2), rekod rayuan tambahan*, the written and oral

submissions of both parties and the judgment of the learned trial judge, we were in agreement with Her Ladyship's decision as alluded to in para 9 above, that the appellant had failed to prove his claim against the respondent. We also agreed with the learned trial judge that the respondent had succeeded in establishing his counterclaim against the appellant. We now give our reasons.

Firstly, whether the 1974 agreement and irrevocable power of attorney were valid and binding on the parties

[13] The original issue of title for RH 17 Lot 3673 finally issued on the 15 September 1995 held under GM 1093 Lot 3673, Mukim Jementah was endorsed with restrictions in interest, that prior approval from the state authority must be obtained before the said land can be transferred.

[14] As the title has been issued, the provisions of the National Land Code shall apply. Section 47 of the Land (Group Settlement Areas) Act 1960 provides:

(a) in respect of a holding to which there is a document of title, the following provisions of this section shall apply;

(b) subject to this section, the National Land Code shall apply to the holding; and

(c) express conditions and restrictions in interest endorsed on the document of title shall continue to run with the land until amended or rescinded pursuant to sub-s (4) and shall be deemed to be express conditions and restrictions in interest imposed under the National Land Code.

[15] The appellant agreed that the said land cannot be sold or transferred to him without the prior approval of the state authority. He agreed that if the application for the requisite approval is rejected, the said land cannot be transferred to him.

[16] The 1974 agreement was a conditional agreement as the said land cannot be transferred without the prior approval from the authority, for the transfer to take effect, the approval must first be obtained by the respondent. It is a statutory condition precedent.

[17] The appellant had admitted that the respondent's application for the requisite approval had been rejected on the 1 August 1996. The appellant's previous solicitors Messrs A Singh & Partners were informed of the said rejection by the respondent's solicitors, Messrs CC Aiyathurai & Co via a letter dated 1 October 1996. The appellant's appeal against the said rejection by letter 14 October 1996 had also been rejected on the 4 November 1996. The

appellant averred that the respondent had manipulated, deceived and misrepresented to the Pentadbir Tanah Daerah, Segamat who finally rejected the respondent's application for the requisite approval. The learned trial judge found that the appellant had failed to prove the element of deception and fraud. At p 11 of her judgment, Her Ladyship wrote as follows:

> [11] Adalah diperhatikan dan dari keterangan yang ada, plaintif telah gagal membuktikan terdapatnya unsur kecurangan dan frod yang telah dikatakan dilakukan oleh defendan. Pernyataan plaintif ini hanyalah pernyataan kosong semata-mata tanpa membuktikan atau disokong oleh apa-apa fakta atau keterangan dokumentar. Plaintif akui terdapatnya permohonan oleh defendan untuk kebenaran dari Pihak Berkuasa, permohonan ditolak dan rayuan plaintif juga telah tidak mendapat maklumbalas dari Pihak Berkuasa. Bagaimanakah atau atas alasan apakah plaintif bersandarkan akan pernyataannya yang mengatakan defendan telah curang dan melakukan frod di dalam membuat permohonan kebenaran sehingga menyebabkan permohonan kebenaran tersebut telah ditolak oleh Pihak Berkuasa. Mahkamah ini tidak boleh menerima alegasi atau sesuatu pernyataan tanpa disokong oleh keterangan atau bukti-bukti, tambahan pula pernyataan plaintif ini adalah merupakan satu tuduhan terhadap defendan.

[18] When rejecting the appellant's appeal against the said rejection, the Pentadbir Tanah Daerah, Segamat by its letter dated 4 November 1996 had explained the reason for its rejection. The High Court had considered that the state authority had found both the respondent's and appellant's application had no merits and this finding of facts should not be disturbed. The respondent had duly refunded the said purchase price of RM4,000 vide MBB Banker's Cheque No 061945 to the appellant's solicitors, Messrs A Singh & Partners. The appellant solicitors, however, had returned the said banker's cheque to the respondent's solicitors, Messrs CC Aiyathurai & Co.

[19] As the respondent's application for the requisite approval had been rejected, the 1974 agreement had therefore become unenforceable and no longer binding on the parties.

[20] For completeness, it is worthy to note that pursuant to s 76 of the NLC 1965, the state authority can alienate state land. Alienated land may be subjected to conditions and restrictions in interest under s 109(2)(a). The power to impose conditions or restrictions in interest on the said land is vested in the state authority under s 120. Section 124 confers upon the state authority the power to alter or rescind any of the conditions expressed in a title.

[21] The restrictions in interest endorsed on the said land was imposed under s 120 of the NLC 1965. The respondent's application for the requisite approval had been rejected. As the application had been rejected, the 1974 agreement cannot bind the state authority to transfer the said land to the appellant. The general rule is that statute overrides contractual provisions. In

Kerajaan Negeri Sarawak & Ors v Basnol bin Abol (deceased) & Ors and other appeals [2003] 1 MLJ 376 at p 387A, this court held:

> Moreover, the general rule is that statute overrides contractual provisions (see *Kerajaan Negeri Selangor v Maraputra Sdn Bhd* [1992] 1 CLJ 441.

[22] As the power whether to approve or reject the respondent's application is vested exclusively in the state authority under s 124 of the NLC 1965, the court cannot grant the relief sought by the appellant. To allow it would, to our mind tantamount to the court usurping the absolute and exclusive power of the state authority whether to grant such approval or not. In *Basnol bin Abol (deceased) & Ors and other appeals*, this court had said:

> ... it tantamounts to a usurpation by the court of the powers exclusively vested in the Majlis Mesyuarat Kerajaan Negeri ...

[23] Reverting back to the main stream of this suit, the respondent's right to occupy the said land/holding in expectation of title can only be assigned and cannot be sold under the Land (Group Settlement Areas) Act 1960. Section 24 of Land (Group Settlement Areas) Act 1960 provides:

(a) subject to the provisions of this Act, a *holder in occupation* of a rural holding in expectation of title may *assign* his rights in that holding to any individual person qualified in accordance with the provisions of s 19 and approved by the collector, unless proceedings for re-entry under s 22 shall have been commenced; and

(b) the *assignment* shall be in Form C in the First Schedule and shall be submitted to the collector who shall enter the name of the assignee in the register of holdings.

[24] The appellant himself confirmed such a mandatory requirement.

[25] The appellant had admitted that the Form C had been duly signed by the respondent. This court was referred to the two supporting affidavits of the appellant filed in support of Originating Summons Nos 25–36 of 1998 and 25–52 of 1998 respectively, filed by him in the Muar High Court against the respondent.

[26] There was no valid assignment as the appellant did not register himself as an assignee/occupant of the said land/holding as mandated by s 24 of the Land (Group Settlement Areas) Act 1960. The appellant's witness, SP1 from the land office confirmed that the appellant was not registered as an assignee or occupant.

Secondly, whether the appellant's claim is for specific performance or a declaration of trust or damages

[27] Pua Deck Kee's right in expectation of title was only vested in the respondent on the 8 August 1993. Before the 8 August 1993, the right to occupy still belonged to Pua Deck Kee, deceased. The respondent therefore did not and could not have any interest in the said land/holding under the 1974 agreement which was entered into in the year 1974.

[28] The respondent cannot hold on trust of the said land/holding for the appellant, as he did not have any interest in the said land in 1974 that could be transferred to him. A trust can only be created when the said land is registered in the respondent's name. In *Raman a/l Sinnathamby lwn Munusamy a/l Sinnathamby (sebagai pentadbir harta pusaka Singaramvathy a/p Singaram, si mati)* [2007] 5 MLJ 377 at p 380B, the court held:

> (1) The court emphasised that it is trite law that a *resulting trust* should not exist by an act or promise made by a person who did not have any right or interest on the object or property intended.

[29] The issue of trust was a legal fiction created by the appellant in an attempt to manoeuvre around the provisions of the Limitation Act 1953.

[30] The appellant claims for a declaration of trust or specific performance of the 1974 agreement or damages. He cannot approbate and reprobate as an action for specific performance is clearly inconsistent with a claim for declaration of trust. In *Teo Ah Bin @ Teo Eng Bin v Tan Kheng Guan* [2002] 3 MLJ 121 at p 128 the court held:

> The initiation of the action for specific performance is clearly inconsistent with a claim for declaration of trust and establishes the election by the plaintiff as to specific performance, which election results in estoppel by election against a trust.

[31] The court further held at p 121:

> (2) The plaintiff herein after approbating the contract through specific performance could not reprobate it and averred against it or offered evidence to contradict it through the assertion of a trust. That is the very essence of estoppel by election.

[32] As the appellant has alleged the existence of a trust, therefore, it is incumbent upon him to prove such an allegation. As no evidence has been led to that effect, the appellant has failed to discharge such burden. It is also pertinent to note that the appellant has not pleaded the cause of action premised on a breach of trust.

Thirdly, whether the appellant's claim is barred by statute and the doctrine of laches

[33] It is also important to take notice that the 1974 agreement was only stamped on the 22 May 1995 and the power of attorney registered in the High Court on the 23 May 1995, after some 21 years later!

[34] On the 18 December 1995, the appellant entered a private caveat under presentation No 720/95 *Jld* 8 *Folio* 8 on the said land.

[35] On the 29 September 1998, the appellant filed an Originating Motion No 25–36 of 1998 against the respondent in the Muar High Court praying for an order to extend the said caveat pending the disposal of a civil suit promised to be filed by him. On the 5 October 1998, the High Court dismissed the Originating Motion No 25–36 of 1998 with costs.

[36] On the 4 December 1998, the appellant filed a further Originating Motion No 25–52 of 1998 against the respondent in the Muar High Court for an order to extend the said caveat pending the disposal of a civil suit promised to be filed by him. On the 22 December 1998, Originating Motion No 25–52 of 1998 met the same fate. It was also dismissed with costs.

[37] In both his affidavits filed in support of both his originating motions, the appellant had deposed to the court that his solicitors were in the process of preparing the writ of summons and statement of claim for filing.

[38] The appellant had admitted that he could not file any civil suit against the respondent in 1996 as he had been adjudged a bankrupt on the 5 December 1996. He further admitted that had he not been adjudged a bankrupt, he certainly would have filed the civil suit against the respondent then.

[39] The appellant's cause of action therefore accrued in 1996 immediately after he had entered a private caveat against the said land on the 18 December 1995. As his claim is premised on the tort of deception and misrepresentation, he must bring his claim within six years ie before 2002. Even if his claim was for recovery of land, he must have filed his claim within 12 years from 1996 ie before 2008. However, he only commenced his present claim on the 14 May 2014 which was 18 years later! (ss 6 and 9 Limitation Act 1953).

[40] The appellant's claim is therefore statute-barred by the provisions of the Limitation Act 1953. His claim is also defeated by the doctrine of laches and acquiescence. There is inordinate delay on the part of the appellant in prosecuting his claim for the equitable relief of specific performance against the

respondent on the 14 May 2014, a delay of more than 18 years! The doctrine of laches and acquiescence is independent of the provisions of the Limitation Act. Section 32 of the Limitation Act 1953 expressly permits the court to apply the doctrine of laches and acquiescence to refuse the relief sought by the appellant: see *M Ratnavale v S Lourdenadin* [1988] 2 MLJ 371.

[41] In *Panchanath a/l Ratnavale (suing as the beneficiary to the estate of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased under will dated 10 February 1971) v Sandra Segara Mahalingam (sued as the executor and trustee of the last will of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased dated 10 February 1971) & Ors* [2012] 5 MLJ 109 at p 121 para 27, the court referred to *Halsbury's Laws of England* (3rd Ed) which states:

> Laches is an equitable defence implying lapse of time and delay in prosecuting a claim. A court of equity refuses its aid to a stale demand where the plaintiff has slept upon his rights and acquiesced for a great length of time. He is then said to be barred by laches.

[42] Further, the Latin maxim *vigilantibus non dormientibus, jura subveniunt* (the court of equity has always refused its aid to stale demands, when a party has slept on his rights and acquiesced for a great length of time) applies. It is an established rule of equity that a plaintiff in equity is bound to prosecute his claim without undue delay. A court of equity would refuse its aid to stale demands ie where the plaintiff has slept upon his right and acquiesced for a great length of time. In *Teo Ah Bin @ Teo Eng Bin*, the court at p 122 held, inter alia:

> (5) ... The principle that delay defeats equities or equity aids the vigilant and not the indolent had to be applied vigorously against the plaintiff.

[43] The learned trial judge has rightly refused the relief sought by the appellant by applying the doctrine of laches and acquiescence.

Fourthly, whether the appellant has proved his loss or damages

[44] The appellant has pleaded special damages in the sum of RM344,938. As special damages are actual pecuniary loss allegedly suffered by the appellant, it is trite that it must be strictly proved. In a classical dictum of His Lordship Lord Goddard in the English case of *Bonham Carter v Hyde Park Hotel* [1948] WN 89 which had been referred to by our courts often enough. It is this:

> Plaintiff must understand that if they bring actions for damages it is for them to prove their damages; it is not enough to write down the particulars, and so to speak, throw them at the head of the court, saying, 'This is what I have lost, I ask you to give me these damages'. They have to prove it.

[45] The appellant has failed to lead any evidence to strictly prove special damages. The appellant failed to call Lee Yien Sen and Tiu Chin Tin to testify in respect of the receipts of alleged payments allegedly issued by the appellant to them. All the receipts of the alleged payments to Lee Yien Sen and Tiu Chin Tin were properly rejected by the High Court.

[46] Further, during the trial, the appellant has admitted that the yields he had collected was more than his alleged expenses. He has therefore suffered no loss whatsoever.

[47] The learned trial judge has validly found as a fact that the appellant by his own evidence, had enjoyed high profits from the yields collected from the said land for about 40 years and Her Ladyship's factual finding ought not to be disturbed.

CONCLUSION

[48] Accordingly, we unanimously affirmed the decision of the trial judge to dismiss the appellant's appeal. We, however, allowed the respondent's appeal on the counterclaim with costs of RM30,000 subject to allocatur. Deposit was to be refunded.

Decision of trial judge affirmed; appellant's appeal dismissed; respondent's appeal on counterclaim allowed with costs of RM30,000 subject to allocatur.

Reported by Dzulqarnain Ab Fatar